

**Access to Microfinance & Improved Implementation of Policy
Reform
(AMIR Program)**

Funded By U.S. Agency for International Development

Jordan Service Task Force

FINAL REPORT

**Deliverable for Policy Component, Year 1 Milestone # 6
Contract No. 278-C-00-98-00029-00**

November 1998

This report was prepared by Ms. Sherry Stevenson, in collaboration with Chemonics International, Inc., as prime contractor to the United States Agency for International Development for the AMIR Program. The report is partially completed, the other part was prepared by Mr. Tony Carroll entitled "Elaboration of government of Jordan Intellectual Property Action Plan" which was submitted to USAID on October 18th, 1998.

TASK REPORT

In the context of the services consultancy for the AMIR Project, undertaken between 18 August and 8 September, 1998, the following activities were carried out.

1. Upon arrival, introduction to the Secretary-General at the Ministry of Industry and Trade, Dr. Al-Halaihah, and to the Director of the WTO Unit, **Mrs. Tamam El-Ghul**. Conversations with both about the project and the need to develop a draft offer of services commitments for the Government of Jordan to submit to the WTO in the context of its accession obligations sometime this fall. Agreement upon a work plan for the 10 days in Amman.
2. Meeting with the members of the newly-organized WTO Unit (Loai Ammari, Hana Uraidi, and Maha Ali), and with Dr. Al-Halaihah and Mrs. El-Ghul, as well as Bonni van Blarcom, to discuss the division of work and the work plan in the services area.
3. Intensive meetings and discussions with the members of the legal team which had prepared the listing of *Legal Barriers to Services Trade in Jordan*, over a period of three afternoons and evenings. The purpose of the discussions was to understand the type of barriers that existed to foreign service providers in each of the 155 service sectors set out by the WTO for the purposes of submission of commitments. This also entailed discussion of all relevant horizontal laws in Jordan that affect services trade (investment laws, immigration laws, real estate laws, tax laws, regional trade agreements, etc.)
4. Meetings and interviews with key people in the most important service sectors identified by me for the purpose of the draft offer. This included in particular, financial services (Central Bank, Financial Markets and Insurance officials) and telecommunications (Telecom Regulatory Commission officials). It also included a visit to the Jordan Investment Promotion Corporation to discuss a possible amendment to the Investment Laws and Regulations, so as to make the proposed services offer more transparent and internally consistent with current practice in Jordan. These meetings ran throughout a six-day period.
5. Discussion and explanation of how to schedule services commitments according to WTO requirements with the members of the WTO Unit. Division of tasks for this job among the three members of the Unit, with supervision by me.
6. Elaboration of the List of Article II (MFN) exemptions by me, with explanation of

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The Hashemite Kingdom of Jordan- Article II (MFN) Exemptions

Sector or subsector	Description of measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
All sectors: Commercial presence	Preferential treatment is granted to investors through the means of bilateral investment treaties which give more favorable treatment for _____, _____ and _____	Malaysia, Germany, Poland, Indonesia	Indefinite	Foster investment in Jordan
	<i>- to complete -</i>			

All sectors:**Movement of natural persons**

Arab investors, their families, and workers are allowed to enter Jordan without *obstacles* ?
check

Nationals of Arab countries

Indefinite

To be checked

Arab workers are granted priority in job assignments after Jordanian workers.
(Reciprocity Agreement on Movement of Arab Nationals ?check)

All sectors:**Taxation measures**

Non-Jordanians who are nationals of countries with which Jordan has treaties to avoid double taxation are also granted additional tax exemptions.

Turkey, Tunisia, Indonesia, **Malaysia, Italy, Kuwait, Iraq, and Oman**

Indefinite

Prevention of double taxation; foreign policy considerations

All sectors:**Land use**

Leasing or purchasing of land by non-Arab natural or juridical persons is subject to a reciprocity requirement and Cabinet approval.

All but Arab countries

Indefinite

Foreign policy and security considerations.

Arab nationals and Palestinians

Nationals of **Arab** countries;

Indefinite

All sectors:	may purchase property outside municipalities for the purpose of establishing projects in tourism, industry, residential housing, or land reclamation.	Palestinians		<i>To be checked</i>
Conduct of business		All	Indefinite	
	Non-Jordanian natural or juridical persons may be granted membership to chambers of commerce, an obligatory condition to practice commercial activities in Jordan, only if their countries grant Jordanians reciprocal treatment.			Need to guarantee reciprocal opportunity for Jordanians in business activities abroad
Professional services:				
Legal services		All but Arab countries	Indefinite	
	Access to the bar for non-Jordanians is restricted to Arab nationals, whose countries grant Jordanian lawyers reciprocal treatment.			<i>To be checked</i>
Accounting, auditing, and bookkeeping		All	Indefinite	
	Access to non-Jordanians is restricted to duly qualified auditors whose countries grant reciprocal treatment to			Need to ensure equal access to foreign markets for Jordanian professionals.

Medical services	Jordanians			
	Licenses of physicians who are Arab nationals are automatically renewed annually. Non-Arab physicians need to submit a written request for annual renewal of license, subject to consideration of Ministry.	All but Arab countries	Indefinite	<i>To be checked</i>
Veterinary services				
	Access to non-Jordanians is restricted to qualified and resident Arab veterinarians whose countries grant reciprocal treatment to Jordanians.	All but Arab countries	Indefinite	<i>To be checked</i>
Dental technicians				
	Access to the practice of dental technician is restricted to Jordanians or to Arab nationals whose countries grant Jordanians reciprocal treatment.	All but Arab countries	Indefinite	<i>To be checked</i>
Geological engineers				
	Access to Geologists Association	All	Indefinite	Need to ensure equal access to

	for non-Jordanians is by Cabinet permission, and granted only to geologists whose countries grant Jordanians reciprocal access.			foreign markets for Jordanian professionals.
Pharmacists		All	Indefinite	
	Access to pharmaceutical practice by non-Jordanians is restricted to nationals of countries that grant Jordanians reciprocal access.			Need to ensure equal access to foreign markets for Jordanian professionals.
Financial services:				
Insurance		All	Indefinite; [but requirement is in the process of revision in the new draft insurance law.]	
	Access and licensing for foreign firms to establish a branch or an agent company for insurance or reinsurance is subject to a reciprocity requirement.			Need to ensure equal access to foreign markets for Jordanian insurance companies.
Banking		All	Indefinite	
	Access and licensing for foreign firms to establishment of a bank is subject to a reciprocity requirement.			Need to ensure equal access to foreign markets for Jordanian banks.

Medical labs

Licenses may be issued to non-Jordanians for the establishment of medical labs only if Jordanian nationals are granted reciprocal treatment.

All

Indefinite

Need to ensure equal access to foreign markets for Jordanian medical laboratories.

Tourist guides

Nationals of Arab countries do not need to be residents of Jordan in order to offer tour guide services, provided their country grants Jordanians reciprocal conditions.

All non Arab
Countries

Indefinite

To be checked**News agency service:
Press services**

Foreign news agencies may be allowed to publish newsletter by Cabinet permission, and only if

All

Indefinite
[Agreement not
yet approved by
Parliament.]

Need to ensure equal access to foreign markets for Jordanian news agencies

Jordanian news agencies are granted reciprocal treatment.

**Transport:
Transport
and transit
arrangements**

Agreement with the Arab League
[need contents and title]

Nationals of
Arab countries
and Palestinians

Indefinite

Purpose of fostering trade among the Arab countries, in particular those contiguous to Jordan

Maritime transport

Right of establishment granted to members of the European Union for shipping and maritime activities (specify which) through the Association Agreement between Jordan and the European Communities and their Member States

Members of the
European Union

To foster investment and expansion of trade between Jordan and members of the European Union.

Work Schedule and Interviews conducted in the context of the
Mission to Jordan by Dr. Sherry M. Stephenson

Week of August 17-21. 1998

Preparatory work; reading, gathering of relevant documentation, and
examination of Draft Report on *Legal Barriers to
Trade in Services* prepared by the Legal Team in Jordan
Preparation of List of questions for members of the WTO Secretariat

Monday and Tuesday. 24 and 25 August 1998

Consultations with officials in the WTO Division on Services
Geneva, Switzerland & request for relevant information on the scheduling of service
commitments and on the recent outcome of the negotiations in telecommunications and
financial services

Wednesday. 26 August 1998

Arrival in Jordan
Discussions with Bonni van Blarcom and Stephen Wade, AMIR Project
Meeting with Jamal A.R. Al-Jaberi, Senior Private Sector Officer, USAID
& Jon D. Lindborg, Director, Economic Opportunities Office, USAID

Thursday, 27 August 1998

Meeting with Mrs. Tamam El-Ghul, Director, WTO Unit at the Ministry of
Trade and Industry, with Dr. Al-Halaihah, Secretary General of the Ministry of Trade and
Industry
Meeting with other members of the Technical Team on Services at Ministry
of Industry & Trade: Hana Uraidi, Loai Ammari, and Maha Ali

Consultations/discussions with Legal Team that prepared the Report on
Legal Barriers to Service Trade in Jordan: Dr. Salah Eddin Al-Bashir & Nissreen
Haram, and Mrs. Tamam El-Ghul and Hana Uraidi from the Ministry of Industry &
Trade, as well as other members of the Legal Team to discuss content of the report

Friday. 28 August 1998

Day off; work in hotel

Saturday, 29 August 1998

Meeting with Mr. Jalil F. Tarif, Deputy Director General, Amman Financial Market, **Mrs.** El-Ghul and Hana Uraidi to discuss the services offer for the financial sector

Meeting with Dr. Bassel Ali Hindawi, Controller of Insurance, Ministry of Industry and Trade, and Hana Uraidi to discuss the services offer for insurance

Consultations/discussions with Legal Team that prepared the Report on ***Legal Barriers to Service Trade in Jordan:*** Dr. Salah Eddin Al-Bashir & Nissreen Haram, and **Mrs.** Tamam El-Ghul and Hana Uruaidi from the Ministry of Industry and Trade, **as well as** other members of the Legal Team to discuss content of the report

Sunday, 30 August 1998

Meeting with Mr. Yousef Abu Jamouse, Director General, Telecommunications Regulatory Commission, **Mrs.** El-Ghul and Hana Uraidi to discuss the services offer for telecommunications

Consultations/discussions with Legal Team that prepared the Report on ***Legal Barriers to Service Trade in Jordan:*** Dr. Salah Eddin Al-Bashir & Nissreen Haram, and **Mrs.** Tamam El-Ghul and Hana Uruaidi from the Ministry of Industry and Trade, **as well as** other members of the Legal Team to discuss content of the report

Monday, 31 August 1998

Roundtable with **Mrs.** Tamam El-Ghul and Team on Services at the Ministry of Industry and Trade to explain how to schedule the services commitments for the WTO and to discuss content of the offer

Meeting with Dr. Montaser J. Oklah, Director General, Investment Promotion Corporation, **Mrs.** El-Ghul and Hana Uraidi to discuss the services offer with respect to the existing Investment Law

Meeting with Stephen P. Wade, Program Director, **AMIR** Project, at the **AMIR** Offices, to discuss progress on the project

Tuesday, 1 September 1998

Work all day long with the team in the Ministry of Industry and Trade to draft the Schedule of Service Commitments: each team member was given specific service sectors to work on, under my supervision, while I drafted the List of Article II (MFN) Exemptions,

Drafting of Memo on compatibility of existing law and proposed services offer with the Association Agreement negotiated with the European Communities and which is now before Parliament for approval;
Analysis of treatment of investment in the services sector

Wednesday, 2 September 1998

Work to finalize the draft Schedule of Service Commitments with the \ Technical Team on Services in the Ministry of Industry and Trade
Consultations with the legal team on certain outstanding issues with respect to content of the draft schedule

Meeting with Mr. Ahmad Abdel-Fattah, Deputy Director of the Central Bank of Jordan, Mrs. El-Ghul and Hana Uraidi to discuss the content of the offer with respect to the banking sector

Thursday, 3 September 1998

Preparation of the draft Schedule of Service Commitments, and the Strategy Document to accompany it

Meeting with the legal team to go over draft Schedule of Commitments

Presentation of the Schedule of Service Commitments to the Negotiating Team on the WTO Accession, the Secretary General Dr. Al-Halaihah, and WTO Unit Director Mrs. El-Ghul, of the Ministry of Industry and Trade, members of the WTO Unit and the Legal Team

Meeting with **Mr.** Jamal A.R. Al-Jaberi and Mr. Jon D. Lindborg, at USAID, To brief on the outcome of the services work and the state of the Services offer for Jordan

Friday, 4 September 1998

Finalization of outstanding questions on the content of the services offer with the Legal Team; report on *Legal Barriers to Service Trade in Jordan* to be revised by the team and Ministry for purpose of circulation to Government officials, along with the draft Schedule of Service Commitments

Preparation of the Strategy Document for circulation with the draft Schedule Of Services Commitments within the Government

Memorandum on issues to be resolved within the Jordanian Government
When draft Schedule of Commitments is circulated in order to obtain Government approval to submit offer to WTO

Saturday, 5 September 1998

Departure from Jordan

Week of 7-11 September 1998

Writing and Submission of Report on Consulting Assignment to USAID
And AMIR Project

Finalization of Schedule of Services Commitments with the Ministry of Industry and Trade for circulation within Government and ongoing Assistance with the replies to questions posed by WTO Members on the content of the draft Schedule of Service Commitments

Presentation on SERVICES and SERVICE OFFER

By Dr. Sherry Stephenson
Negotiating Team to the WTO
3 September 1998

Services Sector: key to development and competitiveness of any modern economy

Expanding role of services as source of economic activity:

Largest and fastest growing sector- includes key areas
Such as banking and insurance, telecommunications,
Transport, health, construction./engineering, distribution;
All professional services; education; tourism, etc.

Share of services in Jordan's economy: around 60 percent of GDP
Majority of employment is also in the services sector

Trade in services still in the beginning in Jordan: but tourism important; Also financial services; consulting

Expansion of service sector due to demand as well as supply:

--people becoming wealthier, more leisure
--organizational changes in our economies: firms have begun to outsource services such as design, financing, transport, which they previously provided themselves, and so these have become activities in their own right.

Before, services were thought of as non-tradables?

Now the picture is different, with advent of technological advances in computers, information technology and telecom

Many more services can be traded now than in the past

At the world level, services represent around 20 percent, or one-fifth of world trade; Although services are so important in world trade and continue to grow more rapidly than trade in goods, not yet adequately captured

The official percentage heavily understates importance of trade in services. Why?

much of services trade not recorded
many services embodied in goods, so the value of the services component is not separated out

Services only under multilateral rules and disciplines since 1995
Negotiated in the Uruguay Round:

General Agreement on Trade in Services
GATT 1994
IPR
Dispute Settlement Provisions

Obligation of every WTO member is to provide:
Schedule of tariffs for goods
Schedule of commitments on trade in services

WTO is only concerned with TRADE IN SERVICES, and the GATS tries to progressively liberalize this trade

Services are more complex and complicated to negotiate and to
Liberalize than trade in goods. Why?
not familiar with them
not **as** transparent **as** tariffs
barriers are in the form of laws, decrees, regulations that discriminate as between
foreign and domestic service suppliers
GATS objective is to progressively liberalize these barriers to trade in services

No idea of how to go about this in 1986 when Uruguay Round begun ?
Definitions developed for how to classify trade in services

Modes :
1), 2), 3), 4)
Explain and give examples

Most important mode for services trade is Mode 3, or commercial
Presence; otherwise **known** as Right of Establishment, or
Foreign Direct Investment
2/3 of value of services trade under this mode
Also Mode 1 linked to that of Mode 3

To accede to the WTO, a service SCHEDULE must be submitted that covers trade in services
according to these four modes, and
According to all of the service sectors

155 service sectors under **GATS** X 4 modes = 620 possibilities

Important: In the **GATS/WTO**, a country only commits to what it
Puts in its schedule; if a sector is not included in its schedule,
Then there is no requirement to offer any particular treatment to foreign service
suppliers

But each of these commitments can be modified by a restriction of
Two types:
--Market Access
--National Treatment

A country can commit to a certain type of access for each sector,
And each mode within that sector, **as** modified by these two
So there are really 1,240 total commitments possible

What we have been doing in Jordan is trying to make a road map of this universe of possible
service commitments

Would be impossible to do without a survey of the terrain ? knowing exactly what type of
laws and practices exist with respect to the treatment of services within the Jordanian
economy

Report on ***Legal Barriers to Service Trade in Jordan*** carried out for this purpose by a
distinguished legal team

Presentation of this effort has already been made to the
Members of the Negotiating Team

Content **of** this survey was transformed into a draft Schedule of
Service Commitments

Strategy of Government to be defined along with preparation of

Proposed Schedule:

Basic idea :

bind existing access for **as** many sectors **as** possible

exclude problematic sectors such **as** construction/engineering and air and road
transport

bind liberal access where it **is** practised

(i.e. banking, hotels, maritime transport, etc.)

indicate future commitments to liberalization

(i.e. telecommunications, insurance)

Government Goal:

To ensure that the services sector provides competitive conditions for factor and product markets and serves to increase

The level of efficiency and productivity in the Jordanian economy

--Enhances domestic industrial performance, and serves **as an** engine behind future economic growth in **high** productivity areas such as information technology, consulting, etc.

Schedule of Service Commitments to the WTO and the Government's Strategy towards Services Negotiations

6 September 1998

The Government of Jordan has put together a draft Schedule of Commitments on Services, as an obligatory part of its obligations for accession to the WTO. This note explains the content of the draft Services Schedule, with a brief analysis of the Government's strategy towards the services negotiations.

Trade in Services and the WTO Obligations

Trade in services was only brought under multilateral trade rules and disciplines as of 1 January 1995, following the successful conclusion of the Uruguay Round and adoption of the General Agreement on Trade in Services (GATS). As a part of GATS obligations, all members of the WTO (134 at present) must submit a Schedule of Service Commitments, either as a result of the Uruguay Round negotiations or as part of their Protocol of Accession. Jordan is obliged to do the same.

Under the WTO "trade in services" has been defined as the possibility of a foreign service provider to supply a service in a third market through either one of four modes:

Mode 1 : Cross-border supply of services

Mode 2 : Consumption abroad

Mode 3 : Commercial presence (or right of establishment)

Mode 4 : Presence of natural persons

[For more detailed explanation of the modes, see cover note to the *Survey of Legal Measures to Services Trade in Jordan* accompanying this note.]

A Services Schedule for the WTO consists of commitments which Jordan is willing to undertake in order to guarantee a certain level of access to its domestic market for foreign service providers for all of the service activities specified in its Schedule. Under the WTO classification list for services, there are 155 different service sectors and activities, for which commitments may be undertaken. The number of commitments included in a Schedule is the choice of each WTO member, but is subject to the requests and expectations of each country's major trading partners.

The final Services Schedule for Jordan will be the result of negotiations and a certain amount of political compromise. However, the quality of an initial submission may exercise considerable influence upon the type of response which other trading partners may have and

the requests they may formulate for improvements. For this reason, it is important that Jordan's draft Services Schedule be both **as** comprehensive and **as** credible as possible.

Jordan's draft Schedule of Services Commitments

Putting together a schedule of service commitments is a vast and rather complex exercise, **as** the service sectors are numerous, and many different service activities fall within the various broad sectors. Services constitute around **60** percent of total **GDP** at present in Jordan, and this percentage has been constantly increasing in Jordan, **as** elsewhere, **as** most countries in the world are moving towards increasingly becoming service economies.?

The compiling of Jordan's draft Schedule of Services Commitments has been facilitated by a comprehensive survey that was carried out of all Jordanian laws, regulations, and practices that affect and often restrict the ability of foreign service providers to provide services to the Jordanian market. The survey is entitled ***Legal Barriers to Service Trade in Jordan*** and was prepared by a local law firm in Amman at the request of the Ministry of Industry and Trade. The survey accompanies the draft Schedule of Commitments so that Government Ministries and bodies may verify the accuracy of the information it contains.

The measures contained in the comprehensive survey most often constitute some form of restriction on market access for foreign service providers. However, certain discriminatory measures affecting national treatment also exist, as do several agreements requiring reciprocal access by third countries for Jordanian service providers in order for foreign companies to enter the local market. Additionally, there are certain bilateral investment treaties which contain elements of preferential access to the Jordanian market, as well **as** agreements with the members of the Arab League, and most recently, with members of the European Communities. All such agreements and reciprocity requirements must be listed as an exception to the most-favoured nation principle (in a List of Article II (MFN) Exemptions).

The Draft Schedule of Service Commitments has been derived from the information in the comprehensive survey, **as** well as **from** interviews in certain Ministries and with the Investment Promotion Corporation. Commitments in the Schedule are set out by sector and by mode of service provision, subject to any modification or restriction with respect to market access or national treatment. In reading the schedule, it is helpful to note that :

--?None? in a column indicates that there is no restriction in place for that particular sector and mode of service provision, and that Jordan is prepared to commit to liberal access for foreign service providers;

--?Unbound? in a column indicates that the Government does not wish to undertake any commitment for that particular sector and mode of service provision at the present time.

The schedule is divided into three parts:
a list of horizontal commitments, which include laws that affect the provision of *all* services across the board;
a detailed list of commitments, by sector and by the four modes of supply;
a list of Article II (MFN) Exemptions.

An effort has been made to make the draft Schedule of Service Commitments as comprehensive **as** possible, in order to increase the benefit Jordan will receive from WTO members for making its laws and regulations transparent **as** applied to **as** broad a number of service activities as possible. This will also increase the credibility of Jordan's offer.

Strategy ~~for~~ services negotiation

Certain strategic choices were made in putting together the content of the draft services Schedule.

First, nearly all sectors have been included in Jordan's service offer. The only excluded sectors are those which are both highly restrictive and problematic for various reasons. These are:

- construction and engineering;
 - postal services;
 - road transport; and
 - government services and pension schemes;
- air routing (also excluded under the GATS).

Second, existing access has been bound for as many sectors **as** possible, and for all included sectors. Thus all of the service commitments at present (unless otherwise stated) represent nothing more than a binding of the 'status quo' situation. This means that Jordan will continue to offer the same access to foreign service companies after its accession to the WTO that it did before its accession. Certain sectors where a monopoly over services provision is present (audio-visual; port services) have also been included, in the hopes **of** also generating a discussion within the Government on the viability of maintaining such monopolies into the future.

Third, existing liberal access has been emphasized throughout the draft schedule. Wherever no limits exist on foreign equity participation in a particular service sector (100 percent foreign ownership allowed), this **is** restated in the schedule as well **as** under the investment law in the horizontal section. Several sectors were mentioned in this way, including banking and financial markets; hotel construction; maritime transport, and so forth.

Fourth, Government policy to future liberalization is also included in the draft schedule. This is notably the case for the telecommunications sectors, which will be **an** important one for major WTO members, where the policy decision to lift the monopoly on basic telecom services **as of** the year 2002 is clearly stated. Such an entry is equal to a ?pre-commitment? which is also legally binding under the WTO. A pre-commitment to future liberalization for the insurance sector may also be included, subject to Government decision and the content of the new law under revision.

The strength of Jordan's draft Schedule of Service Commitments in its present form lies in three factors:

- (i) its comprehensiveness, and the enormous step towards increased transparency that this represents;
- (ii) its proposed binding of liberal access in the banking and financial markets sector (subject, in all cases, to the respect of prudential regulations);
- (iii) its inclusion of a pre-commitment to liberalize in the telecommunications sector **as of** the year 2003;

The weakness of Jordan's draft Schedule **of** Service Commitments in its present form lies in the following :

- (i) the proposed binding of no more than the status quo in nearly all service sectors;
- (ii) the pervasive element of discretionary licensing which continues to be present for the approval of all new foreign investments in Jordan.

On the whole, however, the draft services offer in its present form would appear to represent a solid WTO commitment, consistent with Jordan's level of economic development, and with the Government's approach towards gradual further opening of the economy in certain monopolized sectors and of bringing greater transparency and objectivity to economic transactions (**as** contained in the letter by His Majesty King Hussein's of 8/26/98 to Prime Minister Fayez Tarawneh).

Memorandum

To: Mrs. Al-Ghoul,
WTO Unit Director
Ministry of Industry and Trade, Amman, Jordan

CC: Mr. Stephen P. Wade, Program Director, AMIR Project
Ms. Bonni van Blarcom, WTO Accession Advisor
Members of the Technical Team on Services
Ministry of Industry and Trade, Amman, Jordan

From: Sherry M. Stephenson

Date: 27 August 1998

In the context of my work with the Jordan Task Force on Services, I topped in Geneva on my way to Amman, and spent the better part of two days in the WTO Secretariat, consulting with officials in the WTO Division on Services. The purpose of the consultations was to clarify certain issues and questions surrounding the scheduling of commitments on services by Jordan in the context of its accession to the WTO. For this purpose I spoke with three different officials, each of whom provided different but complementary insights on this matter.

Overall, the message which came out of the discussions was that scheduling a list of commitments on services is not an exact science! The way in which various WTO Members have done this has differed as between countries, and has often differed from the form recommended by the WTO Secretariat.

Part of the difficulty stems from the fact that the only existing set of guidelines were hastily put together at the end of the Uruguay Round negotiations and are quite dated at present. Moreover, they were not very detailed at the outset, and many of the nuances and technical issues which arise in the scheduling exercise are not covered. In particular, the guidelines are not explicit on how to treat conditions of reciprocity nor on what to do with respect to existing preferential sectoral agreements on services. Nor is the distinction always clear as between a measure which represents a market access restriction and one which affect national treatment in a discriminatory way.

Some of these issues have become clearer with time, but unfortunately the guidelines for scheduling commitments have not been updated by the WTO Secretariat. It is therefore necessary to rely on the knowledge of those who have

been working in this area, to use elements of judgement, and to consult with the WTO Secretariat in the case of doubt with respect to a particular form of a scheduled commitment.

The only documents which exist and are relevant for the purpose of scheduling commitments on services under the WTO are the following :

Scheduling of Initial Commitments in Trade in Services MTN.GNS/W/164 in date of 3 September 1993

Scheduling of Initial Commitments in Trade in Services:
Explanatory Note MTN.GNS/W/164/Add.1 of 30 November 1993

Listing of Article II Exemptions of 15 September 1993

Accession to the World Trade Organization : Information to be Provided on Policy Measures Affecting Trade in Services, WT/ACC/5 in date of 31 October 1996

Services Sectoral Classification List, along with the Central Product Classification List (CPC) of the United Nations

The General Agreement on Trade in Services (GATS)

Some of the points which were emphasized to me in discussion with the WTO Secretariat and which provide useful clarification for the scheduling exercise on services are the following:

There should be no transparency column in the Schedule.

All discriminatory measures with respect to nationality are normally listed in the market access column; the national treatment column is considered in the GATS context mainly as residual. Whenever there is a doubt with respect to a restrictive measure, the convention is to schedule under market access.

It is possible to schedule service measures affecting trade that are more restrictive than existing laws, but it is not recommended. Conversely, it is also possible to schedule measures that are more liberal in their access than existing laws. These are political choices.

Although the CPC classification of service activities is the one provided for reference in the scheduling of commitments, it is not mandatory to use this, and commitments may be listed according to service activities that are appropriate to national economic structure.

The schedules of most WTO members do not contain footnotes, and it is not recommended to include them, as this ties a country to existing laws and regulations, which often change.

Sectoral commitments in schedules should contain a description of the measure included, in **as** much detail as possible.

MFN exemptions can be scheduled by any country acceding to the WTO for the first time.

Existing sectoral agreements in the services area (such **as** land transport agreements between Jordan and other countries in the Middle East) are not illegal under GATS, but should be taken out **as** an MFN exemption (in the listing of Article II Exemptions).

Likewise, policies on new service providers which contain a reciprocity requirement should also be listed **as** MFN exemptions.

Documents obtained from the **WTO** Secretariat for Jordan:

CPC Classification List for Service Activities

Verification of Schedules of Specific Commitments and Article II Exemption List (end **through 1997**)

Complete Listing of Commitments on Financial Services made at the
Conclusion of the Uruguay Round (December **1993**)

Compilation of Article II (MFN) Exemptions on Financial Services

Selected National Schedules of Service Commitments of Countries of similar levels
of economic development to Jordan (Chile, Dominican Republic, etc.)

WTO publication on *Opening Markets in Financial Services and the Role ~~of~~ the GATS*, Geneva, WTO Secretariat, **1997**

Information on the Outcome of the Recent WTO Negotiations **for**

Basic Telecommunications and Financial Services

Reform in Basic Telecommunications and the WTO Negotiations: The Asian Experience, by Patrick Low & Aaditya Mattoo

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Other relevant articles on services:

Dealing with Monopolies and State Enterprises: ~~WTO Rules for~~ Goods and Services by Aaditya Mattoo

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Memorandum

To: Dr. Al-Halaihah, Secretary General

Ministry of Industry and Trade

CC: Mrs. El-Ghul, Director, WTO Unit

From: Sherry Stephenson and Hana Uraidh

Date: 2 September 1998

In response to the request of the Secretary General Dr. Al-Halaihah, to examine the compatibility of the provisions of the Association Agreement signed between the European Communities and their Member States, and the Hashemite Kingdom of Jordan, on 24 October 1997, with the current law and practice in Jordan and with the content of the proposed Schedule of Service Commitments to the WTO, we have noted the following, (with the cautionary note that this does not represent a legal opinion):

1. Article **44** specifies that the two parties to the Agreement will be bound by their commitments under the WTO General Agreement on Trade in Services (GATS) and will not grant to each other treatment *?morefavourable than that accorded by each Party under the provisions of the GATS and this in respect of each service sector, sub-sector, and mode of supply.?* This seems to indicate that the commitments on services made under the GATS should serve as the basis for treatment of services as between the two parties to the Agreement.

2. Close reading of the Agreement has highlighted areas of concern and potential incompatibility as between the Agreement's Articles, and Jordan's present Investment Laws which are included in the draft Schedule of Services Commitments for certain professional activities and for the sector of maritime transport. These are indicated below.

Article **30** of the Agreement (dealing with Right of Establishment) states that *?Jordan shall grant for the establishment of Community companies in its territory treatment no lessfavourable than that accorded to its own companies or to companies of any third country, whichever is the better.?* This is also true for subsidiaries or branches of companies.

This Article would seem to contradict the numerous cases of more favourable treatment set out in Jordanian law for the establishment of companies (commercial presence under the GATS) which are granted to firms from Arab countries (legal services, medical services, veterinary services, dental

technicians, architectural and engineering services), in the form of either access or form of ownership or from countries which may offer reciprocal access to Jordanian companies in a particular sector (accounting services, geological engineers, pharmacists, medical laboratories, news agencies). All of these sectors and conditions are set out in the Draft List of Article II (MFN) Exemptions in Jordan's proposed Schedule of Service Commitments. It would seem that the more favorable treatment that is set out in Jordanian law for an investor from any Arab country, for example, would also have to be granted to a firm from any of the European Community member countries, if this were to be challenged (as it is codified in law), and particularly if such conditions of preferential and reciprocal treatment are included in Jordan's Schedule of Service Commitments to the WTO, as is now the case with the draft Schedule.

B. The right of establishment provisions cited in Article 30 would apply to ALL sectors and commercial activities in Jordan with the exception of air transport, inland waterways transport (of which Jordan has none), and maritime transport (as specified in Article 31).

C. However, certain activities relative to the provision of international maritime transport services are specifically mentioned in the Association Agreement as included among those sectors subject to right of establishment. These are set out in Article 31, paragraph 2 and include:

marketing and sales of maritime transport and related services;

purchase and use of any transport and related services, including inward transport services by any mode, *particularly inland waterways, road and rail, necessary for the supply of an integrated service.*

preparation of documentation concerning transport, customs, etc.

(d) provision of business information of any means, including computerized information systems and electronic data interchange.

This Article would seem to cover a wide range of activities including the maintenance and repair of ships, pushing and towing services, port services (cargo handling, storage and warehousing), and shipping agents, which are presently subject to some form of restriction under Jordanian law relating to maritime transport. If these activities do indeed fall under the purview of this Article, then the following restrictions would seem to be contrary to the letter of the EU Association Agreement :

Restriction of establishment (commercial presence) to Jordanian natural or juridical entities for the maintenance and repair of ships;

Restriction to Jordanian ships of access within Jordanian waters for pushing and towing services;

Restriction of establishment (commercial presence) to Jordanian natural or juridical persons for the catering to ships, and to the Ports Corporation for the provision of port services (cargo handling, storage and warehousing) **as** a monopoly supplier;

Restriction of establishment (commercial presence) to Jordanian natural and juridical persons for the provision of services **as** shipping agents, and for the provision **of** services **as** shipping surveyors.

The current legal situation as set out above with respect to services relating to maritime transport has been included in Jordan's draft Schedule of Service Commitments to the WTO.

E. There is thus also a clear contradiction between the content of the proposed Service Schedule on the one hand, which reflects the current state of law in the area of maritime transport, and the measures agreed to in the Association Agreement with the EU, which would require Jordan to open completely those activities relating to maritime transport that are listed above, and to lift the restrictions set out in i) through iv).

If the Association Agreement is approved by Jordan's Parliament, then it would seem that revisions in the law would be required in order to give access to these activities to companies from EU member states and to lift the monopoly enjoyed by the Ports Corporation.

This would not affect the content of the present draft Schedule on Service Commitments, however, other than the necessity to schedule such preferential treatment towards EU members in the Annex on Article II (MFN) Exemptions, so that this differential treatment would be covered from a legal perspective.

This situation may provide the opportunity, however, for the Jordanian Government, to review existing laws and to propose their modification in such a way that existing restrictions would be lifted and access opened to companies **from** any foreign service provider, so that the access to EU member firms would be the same for that of all other countries. **This** course of action would allow the opportunity for the Government to improve upon its services offer in the next round of multilateral service negotiations under the GATS, which are to begin in the year 2000.

F. The treatment of banking under the EU Association Agreement should not pose any problems for Jordan. The banking sector and all of its related activities under the purview **of** the Central Bank is presently open to the establishment (commercial presence) of foreign banks with no limits on equity. The reference to financial services contained in Article **36**, concerns only the laying down of prudential regulations as a justification for particular rules concerning establishment and

operation, which *?shall not go beyond what is strictly necessary as a result of legal or technical differences or, as regards financial services, for prudential reasons.?*

The openness situation for foreign investors in the banking sector in Jordan has also been included in the draft Schedule of Service Commitments to the WTO, and should not provide any contradictions to present practice, or to the EU Association Agreement.

G. In general, with respect to all of the other activities encompassed within Article **30** on the 'right of establishment,' the modification provided by Article **44** would seem to imply that Jordan will be required to provide treatment for service firms from EU member countries that is *no less favorable*, or in other words, treatment on equal terms, to that which will be set out in Jordan's Schedule of Service Commitments to the WTO. Therefore, companies from EU member countries will be allowed to enter Jordan for purposes of establishment on the same basis **as** provided for in the commitments to the WTO. It appears that this requirement applies only to those service sectors included in Jordan's Schedule of Commitments, and not to service sectors across the board, aside **from** the particular conditions specified for maritime transport.

General Comment for Telecommunications Sector:

The provision of basic telephone services (voice telephone and several related services) is presently the exclusive right **of** the Jordan Telecommunication Corporation (JTC). In 1995 the JTC became a public shareholding company wholly owned by the Government. The Jordanian Government has committed to a gradual process of privatization and commercialization of the telecommunications sector. Among the Government's objectives are the encouragement of investment in the sector, **from** all sources (public, private, local and foreign), **as** set out in the Letter of Sector Policy in date of _____

To facilitate the process of privatization and commercialization, an independent Regulatory Commission was established in 1995, whose responsibilities are to: license those companies who provide telecommunications in Jordan; establish transparent criteria for entry into telecommunications services; regulate prices where service providers have monopoly power; enforce interconnection requirements and resolve interconnection disputes; and set technical standards.

The exclusivity contracts for the provision of basic telephone and other services enjoyed by the Jordan Telecommunication Corporation are to be lifted by the year 2002, and competition introduced into the sector **as** services are opened to foreign and other domestic suppliers **as** of the year 2003. The number of companies to provide such services is to be decided by Cabinet, upon the recommendation of the Telecommunications Regulatory Commission, and to be based on market and economic efficiency considerations. A new Telecommunications Law is currently under preparation (check on status).

General Comment for Banking and Financial Sector

Access to provision of services in the banking and financial markets sectors is open, with no limit on foreign equity participation. The legal form for the provision of such services is also unrestricted. Licensing of foreign banks and financial service companies is under the authority **of** the Central Bank, and all foreign and domestic companies are required to fulfill the prudential requirements set out in the banking law. There are certain restrictions on the type of activities in which banks are allowed to engage, for prudential reasons.